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7  
8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2009-51

11 MICHAEL EVERETTE TANNER  
12 349 Briar Ridge Road  
San Jose, CA 95123  
13 Registered Nursing License No. 523108

**ACCUSATION**

14 Respondent.

15  
16 Complainant alleges:

17 PARTIES

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation  
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs.

21 2. On or about July 2, 1996, the Board of Registered Nursing issued  
22 Registered Nursing License Number 523108 to Michael Everette Tanner (Respondent). The  
23 Registered Nursing License was in full force and effect at all times relevant to the charges  
24 brought herein and will expire on September 30, 2009, unless renewed.

25  
26 JURISDICTION

27 3. This Accusation is brought before the Board of Registered Nursing  
28 (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 2750 of the Business and Professions Code (Code) provides, in  
4 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
5 temporary or an inactive license, for any reason provided in Article 3 (commencing with section  
6 2750) of the Nursing Practice Act.

7 5. Section 2764 of the Code provides, in pertinent part, that the expiration of  
8 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
9 against the licensee or to render a decision imposing discipline on the license. Under section  
10 2811(b) of the Code, the Board may renew an expired license at any time within eight years after  
11 the expiration.

12 6. Section 2761 of the Code states:

13 “The board may take disciplinary action against a certified or licensed nurse or  
14 deny an application for a certificate or license for any of the following:

15 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

16 “(1) Incompetence, or gross negligence in carrying out usual certified or licensed  
17 nursing functions.

18 . . .

19 7. Section 726 of the Code states:

20 “The commission of any act of sexual abuse, misconduct, or relations with a patient,  
21 client, or customer constitutes unprofessional conduct and grounds for disciplinary action for  
22 any person licensed under this division, under any initiative act referred to in this division and  
23 under Chapter 17 (commencing with Section 9000) of Division 3.

24 “This section shall not apply to sexual contact between a physician and surgeon and his or  
25 her spouse or person in an equivalent domestic relationship when that physician and surgeon  
26 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or  
27 person in an equivalent domestic relationship.”

28 8. Section 125.3 of the Code provides, in pertinent part, that the Board may

request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

10. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

11. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the

subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

#### FACTUAL BACKGROUND

12. On or about November 2, 2005, Respondent was working as a registered nurse in the Emergency Department at O'Connor Hospital in San Jose, California. Patient D.D., a 33 year old male, was admitted to the Emergency Department at O'Connor Hospital for knee pain. The Emergency Department physician diagnosed D.D. with an infected prepatellar bursitis in the right knee, and right lower extremity cellulitis, and ordered: a blood culture, urinalysis, further blood tests, an IV saline lock, and pain medications.

13. On or about November 2, 2005, Respondent was assigned to care for D.D. in the O'Connor Emergency Department. Respondent came into D.D.'s room with a syringe in his mouth and pain medications. Respondent put the syringe and medications down, and left the room. When he returned, he instructed D.D. to roll over onto his side. Respondent told D.D. "As fast as I can put you in wonderland, I can bring you back." Respondent then inserted his finger into D.D.'s rectum, twice. There was no order for a rectal exam, or for a fecal occult blood test, or Hemoccult (a test for blood in the stool). Further, there was no record of a rectal exam, or the results of the rectal exam in D.D.'s chart.

#### FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

14. Respondent is subject to disciplinary action under section 2761(a)(1) in

1 that he was grossly negligent when he performed a rectal exam on patient D.D. on November 2,  
2 2005 at O'Connor Hospital in San Jose, California, as described above in paragraphs 12 and 13.

3 SECOND CAUSE FOR DISCIPLINE

4 (Incompetence)

5 15. Respondent is subject to disciplinary action under section 2761(a)(1) in  
6 that he was incompetent when he performed a rectal exam on patient D.D. on November 2, 2005  
7 at O'Connor Hospital in San Jose, California, as described above in paragraphs 12 and 13.

8 16. Respondent is further subject to disciplinary action under section  
9 2761(a)(1) in that he was incompetent when he left patient D.D.'s room with pain medication  
10 and a syringe unattended, as described above in paragraphs 12 and 13.

11 17. Respondent is further subject to disciplinary action under section  
12 2761(a)(1) in that he was incompetent when he failed to explain to patient D.D. that he was  
13 going to perform a rectal exam, as described above in paragraphs 12 and 13.

14 18. Respondent is further subject to disciplinary action under section  
15 2761(a)(1) in that he was incompetent when he failed to advocate for the patient and inquire with  
16 the physician as to why a rectal exam would have been ordered on a healthy adult male with knee  
17 and leg pain, as described above in paragraphs 12 and 13.

18 THIRD CAUSE FOR DISCIPLINE

19 (Sexual Misconduct)

20 19. Respondent is subject to disciplinary action under section 2761(a) and/or  
21 section 726 in that he committed sexual misconduct when he performed a rectal exam on patient  
22 D.D. on November 2, 2005 at O'Connor Hospital in San Jose, California, as described above in  
23 paragraphs 12 and 13.

24 FOURTH CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct)

26 20. Respondent is subject to disciplinary action under section 2761(a) in that  
27 he committed unprofessional conduct when he performed a rectal exam on patient D.D. on  
28 November 2, 2005 at O'Connor Hospital in San Jose, California, as described above in

1 paragraphs 12 and 13.

2 PRAYER


3 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
4 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

5 1. Revoking or suspending Registered Nursing License Number 523108,  
6 issued to Michael Everette Tanner.

7 2. Ordering Michael Everette Tanner to pay the Board of Registered Nursing  
8 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
9 Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: 9/8/08

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14   
15 RUTH ANN TERRY, M.P.H., R.N.  
16 Executive Officer  
17 Board of Registered Nursing  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

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